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Misconceptions of Insanity in Jury Trials

THE average layman knows very little about insanity, less perhaps than about almost any other important form of serious disease. But the layman is not aware of his ignorance, and apparently the law is not aware of this either, otherwise we would hardly leave the decision about so important a matter in criminal trials to the judgment of twelve laymen.

If the juryman could rid himself of some of the popular but false ideas in regard to insanity, it would make things much easier for the alienist and afford a step in advance for the cause of criminal justice. For example: It is the general belief that anyone can know an insane person when he sees one, and it seems almost a reflection upon any person's intelligence to suggest that he cannot do so. It is the popular belief that insane persons are abnormally strong; that the insane man realizes that something is wrong with him; that it is an easy matter to railroad anyone into an asylum; that a high percentage of inmates of insane hospitals are not insane, but are simply detained there on one pretense or another; that insane persons are usually highly excited or most peculiar in their behavior; that if a person under rather casual observation can talk in a rational manner, and particularly if he has a good memory and good intelligence, he cannot possibly be insane. All these things may, however, be classed as popular delusions, because, in the main, they are false ideas.

The reasons for these false ideas about insanity are rather easily discoverable. False ideas of every sort are persistently handed down from generation to generation, and it is most difficult to correct these old impressions even when they concern the most tangible sorts of things. In the case of insanity it is particularly hard to do so, since very few persons, relatively

speaking, ever come into close contact with insane patients and a still smaller number of persons ever visit the institutions where the insane are confined, so as to gain any accurate first-hand knowledge. The average person is not at all interested in insanity unless, perhaps, in an occasional case occurring in fiction, in his own family, or in the perennial newspaper semi-fiction about notorious cases; so that it follows that anything like accurate knowledge of insanity is restricted to medical circles, and to a very special field in medicine at that. Under the circumstances, therefore, we should expect to find many miscarriages of justice in cases of suspected insanity that come before the courts; it could hardly be otherwise, under the circumstances. It is, however, our present method of conducting such cases rather than the individuals connected with them that should be criticized for the existence of this state of affairs.

In point of fact, frequently most of the actions, even of very insane individuals, are those of normal, sane persons, and the insane are rarely so insane that all actions and behavior are completely different from those of the average normal human being except, perhaps, in some extreme cases of insanity. The popular conception of a lunatic is that of a maniac who raves incoherently, possesses the strength of two or three ordinary persons, and exhibits a crafty intelligence quite beyond the range of ordinary human beings. Singularly enough, however, when cases in which the plea of insanity is made do show ordinary or superior intelligence, as they frequently do, the jury at once decides that this is a very strong point against the plea, forgetting or failing to know that *intelligence* and soundness of mind have little to do with each other. Among the insane one frequently observes individuals who possess the highest type of intelligence and whose insanity is evidenced only by their faulty forms of reasoning; that is, they are logical enough, but their conclusions are based upon faulty premises, or, in other words, they are obsessed with delusions.

The cases of the raving maniac are quite the exception even in public insane hospitals, and the most dangerous types of insane persons (the so-called monomaniacs) are frequently neat in appearance, quiet in demeanor, and capable of carrying on a perfectly rational conversation, or of writing about subjects rationally that do not touch directly upon their particular delusion or

delusions.[1] Many insane murderers fall into this category, such as the assassin who killed President Garfield, the one that killed President McKinley, the man who took the life of King Humbert of Italy, and hundreds of less notorious madmen. It will be recalled that the man who attempted the life of President Roosevelt was transferred from a prison to an insane hospital shortly after his conviction as a "legally responsible" person.

All things considered, therefore, it is evident that the average person knows quite as little about insanity as he does about other forms of obscure diseases. It is little wonder, then, that trials by jury to determine an individual's mental status are likely to be "something of a joke," as recently suggested by a prominent jurist. Indeed, the result of our archaic method of permitting lay juries to pass judgment on a question of insanity is in fact a travesty of justice. Insanity is a definite disease, not a possession by demons, as was commonly believed up to about a hundred years ago, and it is just as illogical to ask twelve untrained laymen to pass judgment on this pathological condition as it would be to expect them to give correct decisions in cases of suspected leprosy, pellagra, or typhoid fever. Yet the presence of any one of these diseases is more obvious to casual observation, and the symptoms are more apparent to the average layman, than are those of most cases of insanity.

The number of cases that could be cited to confirm our observations in respect to miscarriage of justice in our own courts alone would fill volumes; indeed they do fill volume after volume of court records, as, for example, in a recent nationally notorious murder trial, which lasted for over nine weeks and included over a million words of testimony. The expenditures in such trials represent thousands and thousands of dollars which might be rather easily avoided by a simple, direct and wholly reasonable change in our process of legislation. Apparently, this is fully appreciated by many of those connected with the administration of the law, yet nothing definite is done about it. This curious credulity and ignorance on the part of courts and laymen about insanity and our anomalous state of judicial procedure is frequently taken advantage of by clever lawyers, as is illustrated in the following case:

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[1] Instances of insane lawyers conducting their own cases perfectly before a jury are well known, as, for example, the celebrated Frank Lawler case in Chicago.

A certain woman client of a reputable attorney conceived the idea that he had defrauded her, and since she could not convince the authorities that such was the case, she took the matter into her own hands in a manner quite characteristic of a typical paranoid insane person. Her method of accomplishing this was that of discharging a revolver at the attorney, which convinced him, as well as some others, that the woman was mentally unbalanced, and finally landed her in the psychopathic ward for obervation. Here she was quickly pronounced insane by the lunacy commission, but, as is usual in such cases, she demanded and secured a jury trial. The new attorney whom she now employed, being wise in the ways of juries, and having had considerable experience with insanity cases, and being determined to prove the woman's mental soundness, consulted an alienist friend. This alienist, after looking over the history of the case, assured the attorney that the woman was unquestionably insane and afflicted with a form of insanity that made her particularly dangerous. The alienist advised the attorney, however, that he would have no difficulty in winning his case and in proving that his client was entirely sane, regardless of what the lunacy commission may have thought, and added that the jury would probably be guided in its opinions solely by the appearance and actions in court of the woman herself. The attorney recognized the wisdom of this advice from his client's and his own point of view and the result of the trial confirmed it, for, despite the fact that the physicians of the lunacy commission had testified that the woman was insane, and that in addition two judges of the superior court were placed on the witness stand and testified their belief to the same effect, the jury declared her mentally sound and she was given her liberty—a menace to any person who might in the future cross the path of her abnormal suspicions.

The following cases illustrate some other legal complexities that sometimes develop in insanity trials. A certain prisoner in the Los Angeles county jail acted in such a peculiar manner that the officers suspected him of being mentally unbalanced. Accordingly, he was sent to the psychopathic hospital for observation, and eventually brought before the lunacy commission, which promptly pronounced him insane. The prisoner, like most persons who are actually insane, demurred from this opinion and immediately demanded a jury trial, and as this request must be granted in California, regardless of the findings of the courts and lunacy commissions, or of the obvious insanity of a patient himself, this man was brought

before a jury of laymen to pass upon his mental state. At this trial there was no evidence presented to indicate that the man was of sound mind except the statements of the man himself, and these statements were so confused and incoherent that they could never have deceived any ordinary medical observer. But they did deceive the jury, despite the overwhelmingly expert evidence to the contrary, and the man was, by due process of law, declared "not insane." As a result of the verdict, this man was then placed on trial for the crime of which he had been accused, and was promptly convicted, but during the trial, which lasted for several days, his behavior in the court room was so unusual that even the prosecuting attorney and the court were convinced that the man was mentally unbalanced. Accordingly, he was placed on trial for the fourth time and at this trial was finally pronounced insane by the jury. Thus, by the circuitous process of passing through four different courts, this obviously insane man finally arrived at precisely the same goal that was suggested in the first place by the original lunacy commission. He arrived at the same goal, indeed, but by a very different financial route, involving hundreds of dollars to the county as against a possible twenty-five dollars had the original decision of the lunacy commission been accepted.

About a month later a very similar case occurred in the same county. In this case, as in the other, the man, accused of a minor crime, was pronounced insane by the lunacy commission. He likewise demanded a jury trial, and the jury promptly pronounced him sane, despite the clear evidence to the contrary. This man was, however, less fortunate in the criminal action which followed, as he was duly convicted and sent to prison as a responsible person. But the ultimate result was the same, for after a short period of incarceration this man's behavior was so manifestly insane in character that he was transferred to a state asylum, where he still remains and where he will continue to remain as a permanently irresponsible ward of the state.

In the murder trial already referred to, which has attracted international attention, partly because of the high social and educational status of those involved, it was the opinion of five alienists of unquestioned professional standing that the defendant was insane, incapable of properly advising with his attorneys for his defense in the trial, and irresponsible for his act, if he committed the crime of which he was accused. In this case the trial judge was permitted by law first to have the prisoner tried for insanity and

legal responsibility if the evidence presented to him was such as to establish in his mind "a reasonable doubt" as to the prisoner's sanity and responsibility. A petition to this effect was denied, despite the fact that the prisoner's ancestry was extremely bad on both sides of the family in respect to mental stability, an ancestry which involved, in fact, mental deterioration or actual insanity in nine great uncles and aunts, mental inferiority in one uncle, insanity in one cousin on the paternal side, insanity in one uncle on the maternal side, feeble-mindedness in one cousin on the maternal side, and other cases of mental instability, one of them resulting in suicide. The amount of money involved in the trial of this case, which twice resulted in a disagreement by the jury, was sufficient to provide for the most modern form of scientific criminal investigation and responsibility determination, for this and other cases, for years to come; yet such is the force of public opinion and the effect of custom that one can at present see little hope for any immediate change of such an ineffective legal procedure.

These are a few examples of the many cases that could be cited as filling our court calendars in California and elsewhere. They represent a waste of money and, frequently, flagrant miscarriage of justice. Apparently this is all very fully appreciated by many of those connected with the administration of the law, yet little effort is made to correct the situation. To be sure, now and again a group of individuals does make some serious effort for the establishment of a more modern form of procedure. Indeed, only a short time ago one of these changes made such a vigorous bid for existence that it finally worked its way through both state legislative bodies and to the governor's desk before it succumbed. But at that, it apparently is merely "taking the count," not actually dead, as will be shown a little later.

There seem to be some explicit reasons why such a law becomes sidetracked in our legislative machinery and finally fails to pass. Among these reasons, the following seem to be the most important: (1) The opposition of certain influential criminal lawyers, who would be deprived of an opportunity for a certain kind of professional preëminence; (2) the opposition of certain sensational physicians, who are in effect professional witnesses, and who would lose the glamor and publicity of our present criminal court trials if statements were confined to an unobtrusive report to the trial judge; (3) the influence of certain judges of criminal courts who enjoy the publicity afforded by the present methods employed in criminal

trials; and (4) the general indifference of the public at large towards anything that concerns insanity in any scientific sense, and its general lack of initiative in originating anything new in matters pertaining to criminal procedure.

In the meantime, there are several factors not actually involved in the legal machinery that tend to direct or divert legal justice. Among these factors, the newspapers are probably by far the most important. It is a popular jest that important murder trials are conducted by the newspapers. There is only a modicum of truth in this statement, of course, but nevertheless in every important murder mystery we find newspaper representatives acting as amateur detectives, searching out evidence, relating incidents and expressing opinions. When the subject seems to be worth the space, the papers put on special writers and make capital and copy of all the important as well as trivial incidents of the trial. Since most of our knowledge of everyday events is based upon newspaper statements, this influence cannot fail to insinuate itself into the jury room, and thus, in a measure at least, criminal trials are influenced by the public press. Will anyone pretend that the average juror, whose everyday knowledge, and in many instances total knowledge, has been absorbed for years almost exclusively from newspapers, can suddenly divorce himself from that influence? That this influence is occasionally deliberately misleading, no one can seriously doubt. Some observer has remarked that the newspaper is the "lay Bible" of this great American republic, and that courts cannot escape its influence. Newspapers are conspicuously and professedly partisan and wield an immense political influence, which few courts can entirely ignore. However, there seems to be very little that can be done about it, for there is no indication at present that newspapers are likely to change in their methods or content.

It would, however, seem possible to make some improvement and therefore progress in criminal law by changing the manner of taking expert medical evidence in criminal cases, where the sanity of the accused is in question. According to our present methods, such testimony is largely unscientific, partisan and undignified, tends to discredit both the medical and legal professions, and frequently totally fails to serve the ends of justice, as already indicated. According to the methods now in vogue, medical experts are employed both by the prosecution and by the defense, thus in the very beginning tending to make the whole procedure, from the examination of the patient to the testimony given before the jury, a purely par-

tisan affair rather than an impartial scientific attempt to arrive at a correct diagnosis. This is the antithesis of the method employed by reputable medical men in their usual attempts in the diagnosis of disease. Under the circumstances, it is difficult for the physician, even when making the examination, to obtain the actual facts about the personal history of his patient or about his heredity, as he is frequently furnished only such items of information as partisan representatives of the law choose to give him. As a result, the alienist is likely to reach erroneous conclusions, although they may be honest ones and justified by such evidence as is presented to him. It follows as a natural consequence, therefore, that the statements of the expert witnesses before the court represent biased opinions. These opinions are still further distorted by the manner of cross-examination now commonly in use, which, as recently pointed out by a reputable deputy district attorney, is not likely to bring out any new facts or amplify the facts already in evidence. Such examinations tend to make the witness more partisan than ever in his statements, particularly because of the methods of petty heckling usually employed by the legal representatives of both sides.

The result is not necessarily evidence of dishonesty on the part of the physician, but a perfectly natural reaction to an unreasonable situation. The outcome is not likely to be much of an addition to the cause of justice and truth, for one set of attorneys will attempt to warp the physician's judgment as far as possible in one direction, while the opposing lawyers will attempt to discredit it from the opposite angle. This whole procedure tends to throw discredit on both the legal and medical professions and to deter the best qualified men in their professions from appearing in criminal trials at all. The whole procedure cannot fail to have a certain unfavorable influence not only upon the jury but upon the public at large, and to bring criminal procedure into disrepute.

Now, in point of fact, the sole function of the medical witness at any trial is simply to determine whether the accused man is suffering from mental disease, just as it ought to be at any other kind of medical consultation. He should not be concerned with a question of guilt, innocence, or punishment, yet the practical effect of existing methods is to force the physician to share the legal responsibility as to the outcome of the trial, and the professional success of the side he represents. In actuality, he becomes a professional partisan witness, whether he wishes to or not.

Another deplorable thing about our present system is found in the lack of any standard of qualification in the matter of expert witnesses in insanity cases. Judged by its attitude toward such witnesses, the law does not regard insanity as a disease in the same sense as it does other pathological conditions. For example, in the case of ordinary diseases, the positive opinion of one physician outweighs the contrary opinion of any number of lay observers. In such cases the statement of the village cobbler, blacksmith, carpenter or constable to the effect that he did not believe a certain person had tuberculosis or syphilis, would have no weight as evidence against the positive statement to the contrary by a competent physician. Such is not the case in deciding the much more difficult problem about the very complex and often obscure disease—insanity. In such cases any person may, and often does, express his opinion, and the very bulk of such testimony carries great weight with the jury. It is a common, although hardly an elevating spectacle, at murder trials, to see whole groups of incompetent persons who have been associated with the accused, and representing all degrees of intelligence, delinquency, and criminality, give their testimony and state their opinions about a prisoner's mental condition. The unreliability of these witnesses is plainly evidenced by the fact that they often include other prisoners, prison guards of inferior ability, and in fact any person, no matter how incompetent, who may have observed the accused. Yet the court accepts such testimony, including the word and opinion of men whose lack of integrity is indicated by their incarceration, and upon a subject requiring highly expert knowledge and unimpeachable honesty.

There can be no question, then, that our present methods of conducting trials in which the sanity of the defendant is in question, are highly unsatisfactory and unscientific. Yet the remedy, while complex, may be rather easily applied. As referred to already, this remedy has been suggested in California and elsewhere a number of times. Judge Frank F. Oster has proposed a statute for the consideration of the California state legislature, which, if enacted, would greatly simplify criminal trials and elevate criminal procedure to one of scientific accuracy and dignity, which no one familiar with the facts could claim exists at present. This bill largely removes partisanship in expert testimony, places responsibility for the selection of alienists in the hands of the trial judge, and greatly

limits the possibility for the introduction of prejudiced or frankly dishonest professional witnesses.

While it is true, as stated by Professor A. M. Kidd in an article in the California Law Review for March, 1915,[2] that such a bill does not entirely abolish partisan witnesses, it does greatly reduce partisanship, largely by allowing only ordinary witness fees to experts called by either side in addition to those formally selected by the trial judge. The objection may be made that the court itself may be in no better position to select experts than are the litigants, because it may not possess special knowledge of medical or other highly specialized professions.

Politics, Professor Kidd thinks, hamper the action of most judges and of certain political experts. This objection may be largely obviated, however, by providing for the selection of experts from a group certified in some manner as professionally and personally reliable. This might be brought about through the action of a council to be appointed by the American Medical Association, the American Psychiatric Association, the American Association of Criminal Law and Criminology, or by some other unprejudiced and responsible medical organization. As matters stand at present, the word of a medical witness untrained in psychiatry and often one of a very low order of medical ability, is as acceptable in court as that of any highly trained psychiatrist. It appears that the solution of the whole matter of expert testimony is extremely complicated and difficult but in spite of this fact it remains that something must be done. If the bill referred to, or something like it, will not serve the purpose of relieving criminal trials of their present obvious weaknesses, and actual abuses, then some other method must be attempted. Perhaps Professor Kidd's suggestion that when expert opinion is desired, each profession agree upon which of its members are qualified to act as experts, and that such experts be exclusively chosen for testimony in court, will prove to be the best method of procedure.

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[2] The Proposed Expert Evidence Bill, by A. M. Kidd, 3 California Law Review, 216.

As has recently been said in the editorial page of the Journal of the American Medical Association, it is doubtless true that the introduction of better methods than the present ones rests largely with the legal profession, but physicians in general, and particularly all who are interested in jurisprudence, will strongly favor the adoption of some system that shall increase and not hamper the services which psychiatry, properly used, can render to society in medico-legal matters.

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